

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE APRIL 12, 2004

**SENATE BILL**

**No. 1462**

**Introduced by Senator Kuehl**

February 19, 2004

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~~An act to add Sections 56161 and 65097 to, and to add Title 7.15 (commencing with Section 66550) to, the Government Code, and to add Section 33327.5 to the Health and Safety Code, relating to regional planning. An act to amend Section 65040.9 of the Government Code, to amend Sections 21080.1, 21080.4, 21091, and 21152 of, and to add Sections 21068.1 and 21109 to, the Public Resources Code, relating to environmental quality, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1462, as amended, Kuehl. ~~Southern California Military Greenway Commission~~ Environmental quality: notices: United States military.

*The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.*

*This bill would define the term "special-use air space" for purposes of the act.*

*CEQA requires the lead agency to be responsible for determining whether an environmental impact report, a negative declaration, or a*

*mitigated negative declaration shall be required for any project that is subject to the act.*

*This bill would require all documents prepared pursuant to those provisions of the act for projects located beneath special use air space, as defined, to be transmitted to all branches of the United States military that have provided a single mailing address within the state to receive those documents. The bill would require the lead agency, in the case of a project defined for purposes of the act, upon the request of any branch of the United States military, to provide for consultation prior to the filing of an application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.*

*CEQA requires a lead agency, if it determines that an environmental impact report is required for a project, to immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California.*

*This bill would require the Office of Planning and Research to transmit all of those notices of preparation to the branches of the United States military that have provided a single mailing address within the state to receive those notices.*

*CEQA prescribes specified review periods for draft environmental impact reports, proposed negative declarations, and proposed mitigated negative declarations.*

*This bill would authorize a branch of the United States military or a lead agency, during those public review periods established by the act, to request that the Director of the Office of Planning and Research arrange for nonbinding mediation of any matters of concern to the military in connection with those reviews, as provided. The bill would also require that certain notices required to be provided under the act be transmitted to the branches of the United States military, as provided. By imposing new duties on local agencies with respect to the provision of information regarding projects subject to the act, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*



*This bill would provide that no reimbursement is required by this act for a specified reason.*

*Existing law required the Office of Planning and Research, on or before January 1, 2004, if sufficient federal funds became available for that purpose, to prepare and publish an advisory planning handbook for use by local officials, planners, and builders that explains how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on military installations, military operating areas, military training areas, military training routes, and military airspace, and other territory adjacent to those installations and areas.*

*This bill would appropriate \$200,000 from the General Fund to the Office of Planning and Research to complete that handbook.*

~~(1) The Planning and Zoning Law requires the land use element to consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land or other territory adjacent to those military facilities, or underlying designated military aviation routes and airspace. Existing law, with respect to the open-space element, defines open-space land to include areas adjacent to military installations, military training routes, and restricted airspace.~~

~~This bill would create the Southern California Military Greenway Commission comprised of Los Angeles, Ventura, Kern, Kings, Imperial, Riverside, San Bernardino, and San Diego Counties and consisting of 19 specified voting members. The bill would authorize the commission, among other things, to promote, facilitate, and administer the acquisition of voluntary private and public easements or other voluntary transfers of fee or lesser interests in real property.~~

~~The bill would require the commission, among other things, to research, prepare, publish, and disseminate public information regarding the best practices to avoid conflicts between civilian land uses and special-use airspace, and to identify the exact location of each special-use airspace within the commission's jurisdiction. The bill would require the commission, on or before July 1, 2006, and the legislative body and planning agency of each county and city within its territorial jurisdiction, state agencies, departments, boards, or commissions, the University of California, and the California State University to participate in a specified conflict resolution process or mediation proceedings to determine whether a specified land use~~



~~proposal or a proposal to acquire real property or any interest in real property may significantly and adversely diminish the effectiveness of the military's use of the special use airspace.~~

~~The bill would also provide that if the commission determines that a final proposal may still significantly and adversely diminish the effectiveness of the military's use of a special use airspace, the proposal may only be approved by an entity's governing body if the decision meets specific criteria. By increasing the duties of local planning officials, the bill would create a state-mandated local program.~~

~~The bill would also authorize the commission to apply for and accept financial assistance from any public agency or private entity and receive gifts, donations, rents, royalties, funds derived from state or local bond sales, or federal, state, or local funds. The bill would create the Southern California Military Greenway Fund as a special fund in the State Treasury and would require that moneys deposited in the fund be allocated to the commission upon appropriation by the Legislature.~~

~~The bill would require the commission, on or before March 1, 2005, and each March 1 thereafter, to prepare an annual budget and to apportion among each county within its territorial jurisdiction the amounts to be transmitted to the fund to pay for the commission's operations. The bill would authorize the board of supervisors of each county to collect a fee on the use of real property pursuant to a specified fee schedule as an alternative to transmitting funds to the commission.~~

~~The bill would also require the commission on or before August 1, 2007, and each odd-numbered thereafter to prepare and distribute a specified report.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority <sup>2</sup>/<sub>3</sub>. Appropriation: no-yes. Fiscal committee: yes. State-mandated local program: yes.~~

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. Section 56161 is added to the Government~~
- 2 ~~Code, to read:~~

1     *SECTION 1. (a) The Legislature finds and declares all of the*  
2     *following:*

3     *(1) Military bases and special use airspace are important to the*  
4     *California economy.*

5     *(2) The military needs special use airspace to train.*

6     *(3) The development of civilian land uses underneath special*  
7     *use airspace may significantly and adversely diminish the*  
8     *effectiveness of the military's use of this airspace.*

9     *(4) Creating a process to identify, avoid, and mitigate threats*  
10    *to special use airspace is essential to California's public health,*  
11    *safety, and welfare.*

12    *(b) Accordingly, the Legislature finds and declares that it is the*  
13    *policy of the State of California to cooperate with the military to:*

14    *(1) Protect special use airspace from civilian land uses located*  
15    *beneath this airspace that are incompatible with the military's use*  
16    *of this airspace.*

17    *(2) Respect property owners' constitutional rights by retaining*  
18    *economically viable uses of real property located beneath special*  
19    *use airspace.*

20    *(3) Identify civilian land uses located beneath special use*  
21    *airspace that are incompatible with the military's use of this*  
22    *airspace.*

23    *(4) Create processes to avoid and mitigate civilian land uses*  
24    *beneath special use airspace that are incompatible with the*  
25    *military's use of this airspace.*

26    *(5) Create processes to resolve conflicts between civilian land*  
27    *uses beneath special use airspace and the military's use of this*  
28    *airspace.*

29    *SEC. 2. Section 65040.9 of the Government Code is amended*  
30    *to read:*

31    65040.9. (a) ~~On or before January 1, 2004, the~~ *The* Office of  
32    Planning and Research shall, if sufficient federal funds become  
33    available for this purpose, prepare and publish an advisory  
34    planning handbook for use by local officials, planners, and  
35    builders that explains how to reduce land use conflicts between the  
36    effects of civilian development and military readiness activities  
37    carried out on military installations, military operating areas,  
38    military training areas, military training routes, and military  
39    airspace, and other territory adjacent to those installations and  
40    areas.

(b) At a minimum, the advisory planning handbook shall include advice regarding all of the following:

(1) The collection and preparation of data and analysis.

(2) The preparation and adoption of goals, policies, and standards.

(3) The adoption and monitoring of feasible implementation measures.

(4) Methods to resolve conflicts between civilian and military land uses and activities.

(5) Recommendations for cities and counties to provide drafts of general plan and zoning changes that may directly impact military facilities, and opportunities to consult with the military base personnel prior to approving development adjacent to military facilities.

(c) In preparing the advisory planning handbook, the office shall collaborate with the Office of Military Base Retention and Reuse within the Trade, Technology, and Commerce Agency. The office shall consult with persons and organizations with knowledge and experience in land use issues affecting military installations and activities.

(d) The office may accept and expend any grants and gifts from any source, public or private, for the purposes of this section.

*SEC. 3. Section 21068.1 is added to the Public Resources Code, to read:*

*21068.1. "Special use air space" means any area identified by the Federal Aviation Administration as special use airspace pursuant to Part 73 of Title 14 of the Code of Federal Regulations, including, but not limited to, military operating areas, military training routes, and restricted areas.*

*SEC. 4. Section 21080.1 of the Public Resources Code is amended to read:*

*21080.1. (a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which that is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167. All documents referenced pursuant to this section for projects located beneath special use air space as defined in Section 21068.1 shall be transmitted to all branches of the United*

*States military that have provided a single mailing address within the state to receive those documents.*

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

(c) In the case of a project defined in Section 21065, the lead agency shall, upon the request of any branch of the United States military, provide for consultation prior to the filing of an application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

SEC. 5. Section 21080.4 of the Public Resources Code is amended to read:

21080.4. (a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, the office, and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency, the office, or the public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over



1 natural resources affected by the project that are held in trust for  
2 the people of the State of California, may request one or more  
3 meetings between representatives of those agencies and the office  
4 for the purpose of assisting the lead agency to determine the scope  
5 and content of the environmental information that any of those  
6 responsible agencies, the office, or the public agencies may  
7 require. In the case of a project described in subdivision (c) of  
8 Section 21065, the request may also be made by the project  
9 applicant. The meetings shall be convened by the lead agency as  
10 soon as possible, but not later than 30 days after the date that the  
11 meeting was requested.

12 (c) To expedite the requirements of subdivision (a), the Office  
13 of Planning and Research, upon request of a lead agency, shall  
14 assist the lead agency in determining the various responsible  
15 agencies, public agencies having jurisdiction by law over natural  
16 resources affected by the project that are held in trust for the people  
17 of the State of California, and any federal agencies that have  
18 responsibility for carrying out or approving a proposed project. In  
19 the case of a project described in subdivision (c) of Section 21065,  
20 that request may also be made by the project applicant.

21 (d) With respect to the Department of Transportation, and with  
22 respect to any state agency that is a responsible agency or a public  
23 agency having jurisdiction by law over natural resources affected  
24 by the project that are held in trust for the people of the State of  
25 California, subject to the requirements of subdivision (a), the  
26 Office of Planning and Research shall ensure that the information  
27 required by subdivision (a) is transmitted to the lead agency, and  
28 that affected agencies are notified regarding meetings to be held  
29 upon request pursuant to subdivision (b), within the required time  
30 period.

31 (e) *The Office of Planning and Research shall transmit all*  
32 *notices of preparation to the branches of the United States military*  
33 *that have provided a single mailing address within the state to*  
34 *receive those notices.*

35 SEC. 6. Section 21091 of the Public Resources Code is  
36 amended to read:

37 21091. (a) The public review period for a draft  
38 environmental impact report may not be less than 30 days. If the  
39 draft environmental impact report is submitted to the State  
40 Clearinghouse for review, the review period shall be at least 45





1 days, and the lead agency shall provide a sufficient number of  
2 copies of the document to the State Clearinghouse for review and  
3 comment by state agencies.

4 (b) The public review period for a proposed negative  
5 declaration or proposed mitigated negative declaration may not be  
6 less than 20 days. If the proposed negative declaration or proposed  
7 mitigated negative declaration is submitted to the State  
8 Clearinghouse for review, the review period shall be at least 30  
9 days, and the lead agency shall provide a sufficient number of  
10 copies of the document to the State Clearinghouse for review and  
11 comment by state agencies.

12 (c) Notwithstanding subdivisions (a) and (b), if a draft  
13 environmental impact report, proposed negative declaration, or  
14 proposed mitigated negative declaration is submitted to the State  
15 Clearinghouse for review and the period of review by the State  
16 Clearinghouse is longer than the public review period established  
17 pursuant to subdivision (a) or (b), whichever is applicable, the  
18 public review period shall be at least as long as the period of review  
19 by the State Clearinghouse.

20 (d) (1) The lead agency shall consider comments it receives on  
21 a draft environmental impact report, proposed negative  
22 declaration, or proposed mitigated negative declaration if those  
23 comments are received within the public review period.

24 (2) (A) With respect to the consideration of comments  
25 received on a draft environmental impact report, the lead agency  
26 shall evaluate comments on environmental issues that are received  
27 from persons who have reviewed the draft and shall prepare a  
28 written response pursuant to subparagraph (B). The lead agency  
29 may also respond to comments that are received after the close of  
30 the public review period.

31 (B) The written response shall describe the disposition of each  
32 significant environmental issue that is raised by commenters. The  
33 responses shall be prepared consistent with Section 15088 of Title  
34 14 of the California Code of Regulations, as those regulations  
35 existed on June 1, 1993.

36 (3) (A) With respect to the consideration of comments  
37 received on a draft environmental impact report, proposed  
38 negative declaration, proposed mitigated negative declaration, or  
39 notice pursuant to Section 21080.4, the lead agency shall accept

1 comments via e-mail and shall treat e-mail comments as  
2 equivalent to written comments.

3 (B) Any law or regulation relating to written comments  
4 received on a draft environmental impact report, proposed  
5 negative declaration, proposed mitigated negative declaration, or  
6 notice received pursuant to Section 21080.4, shall also apply to  
7 e-mail comments received for those reasons.

8 (e) (1) Criteria for shorter review periods by the State  
9 Clearinghouse for documents that must be submitted to the State  
10 Clearinghouse shall be set forth in the written guidelines issued by  
11 the Office of Planning and Research and made available to the  
12 public.

13 (2) Those shortened review periods may not be less than 30  
14 days for a draft environmental impact report and 20 days for a  
15 negative declaration.

16 (3) A request for a shortened review period shall only be made  
17 in writing by the decisionmaking body of the lead agency to the  
18 Office of Planning and Research. The decisionmaking body may  
19 designate by resolution or ordinance a person authorized to request  
20 a shortened review period. A designated person shall notify the  
21 decisionmaking body of this request.

22 (4) A request approved by the State Clearinghouse shall be  
23 consistent with the criteria set forth in the written guidelines of the  
24 Office of Planning and Research.

25 (5) A shortened review period may not be approved by the  
26 Office of Planning and Research for a proposed project of  
27 statewide, regional, or areawide environmental significance as  
28 determined pursuant to Section 21083.

29 (6) An approval of a shortened review period shall be given  
30 prior to, and reflected in, the public notice required pursuant to  
31 Section 21092.

32 (f) Prior to carrying out or approving a project for which a  
33 negative declaration has been adopted, the lead agency shall  
34 consider the negative declaration together with comments that  
35 were received and considered pursuant to paragraph (1) of  
36 subdivision (d).

37 (g) *During the public review periods established by this*  
38 *section, a branch of the United States military or the lead agency*  
39 *may request that the Director of the Office of Planning and*  
40 *Research arrange for nonbinding mediation of the matters of*



1 *concern to the military in connection with these reviews. To the*  
2 *maximum extent feasible, the mediation shall terminate before the*  
3 *end of the applicable public review period. The report of the*  
4 *mediator shall be a part of the record, and shall be included in the*  
5 *final environmental impact report. The Office of Planning and*  
6 *Research shall maintain a list of qualified mediators. The cost of*  
7 *mediation shall be divided between the lead agency and the Office*  
8 *of Planning and Research.*

9 *SEC. 7. Section 21109 is added to the Public Resources Code,*  
10 *to read:*

11 *21109. All notices filed pursuant to this section shall be*  
12 *transmitted to the branches of the United States military that have*  
13 *provided to the Office of Planning and Research a single mailing*  
14 *address within the state to receive those notices.*

15 *SEC. 8. Section 21152 of the Public Resources Code is*  
16 *amended to read:*

17 *21152. (a) Whenever a local agency approves or determines*  
18 *to carry out a project which is subject to this division, it shall file*  
19 *notice of the approval or the determination within five working*  
20 *days after the approval or determination becomes final, with the*  
21 *county clerk of each county in which the project will be located.*  
22 *The notice shall indicate the determination of the local agency*  
23 *whether the project will, or will not, have a significant effect on the*  
24 *environment and shall indicate whether an environmental impact*  
25 *report has been prepared pursuant to this division. The notice shall*  
26 *also include certification that the final environmental impact*  
27 *report, if one was prepared, together with comments and*  
28 *responses, is available to the general public.*

29 *(b) Whenever a local agency determines that a project is not*  
30 *subject to this division pursuant to subdivision (b) of Section*  
31 *21080 or pursuant to Section 21085 or 21172, and it approves or*  
32 *determines to carry out the project, it, or the person specified in*  
33 *subdivision (b) or (c) of Section 21065, may file a notice of the*  
34 *determination with the county clerk of each county in which the*  
35 *project will be located. Any notice filed pursuant to this*  
36 *subdivision by a person specified in subdivision (b) or (c) of*  
37 *Section 21065 shall have a certificate of determination attached to*  
38 *it issued by the local agency responsible for making the*  
39 *determination that the project is not subject to this division*  
40 *pursuant to subdivision (b) of Section 21080 or pursuant to Section*

1 21085 or 21172. The certificate of determination may be in the  
2 form of a certified copy of an existing document or record of the  
3 local agency.

4 (c) All notices filed pursuant to this section shall be available  
5 for public inspection, and shall be posted within 24 hours of receipt  
6 in the office of the county clerk. Each notice shall remain posted  
7 for a period of 30 days. Thereafter, the clerk shall return the notice  
8 to the local agency with a notation of the period it was posted. The  
9 local agency shall retain the notice for not less than nine months.  
10 *All notices filed pursuant to this section shall be transmitted to the*  
11 *branches of the United States military that have provided to the*  
12 *Office of Planning and Research a single mailing address within*  
13 *the state to receive those notices.*

14 *SEC. 9. No reimbursement is required by this act pursuant to*  
15 *Section 6 of Article XIII B of the California Constitution because*  
16 *a local agency or school district has the authority to levy service*  
17 *charges, fees, or assessments sufficient to pay for the program or*  
18 *level of service mandated by this act, within the meaning of Section*  
19 *17556 of the Government Code.*

20 *SEC. 10. The sum of two hundred thousand dollars*  
21 *(\$200,000) is hereby appropriated from the General Fund to the*  
22 *Office of Planning and Research to complete the handbook*  
23 *required to be prepared pursuant to Section 65040.9 of the*  
24 *Government Code.*

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27 **All matter omitted in this version of the**  
28 **bill appears in the bill as amended in the**  
29 **Senate, April 12, 2004 (JR 11)**  
30  
31